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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Jon S. Moorhead

Serial No. 78182902

Patricia A. Walker of Walker & Jocke for Jon S. Moorhead.

Maria-Victoria Suarez, Trademark Examining Attorney, Law
Office 102 (Thomas V. Shaw, Managing Attorney).

Before Quinn, Hairston and Grendel, Administrative
Trademark Judges.

Opinion by Grendel, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark URGENTCASH (in standard character form) for
services recited in the application as "financial services
in the nature of check cashing, deferred deposits,
financial overdraft protection and short-term consumer
loans."¹

¹ Serial No. 78182902, filed on November 7, 2002 on the basis of
intent-to-use under Trademark Act Section 1(b), 15 U.S.C.

The Trademark Examining Attorney has issued a final refusal of registration on the ground that applicant's mark, as applied to the services recited in the application, so resembles the mark URGENT MONEY SERVICE, previously registered (in standard character form) for services recited in the registration as "cash advance services," as to be likely to cause confusion, to cause mistake, or to deceive. Trademark Act Section 2(d), 15 U.S.C. §1052(d).

Applicant has appealed the final refusal. The appeal is fully briefed. We affirm.

Our determination under Section 2(d) is based on an analysis of all of the facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. *See In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). *See also In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the

§1051(a). As originally filed, applicant sought to register the mark as two words, URGENT CASH. Applicant subsequently filed an amendment to allege use, which alleged November 8, 2002 as the date of first use anywhere and the date of first use in commerce. The amendment to allege use also sought amendment of the mark from URGENT CASH to the compressed term URGENTCASH. The proposed amendment was accepted by the Trademark Examining Attorney at footnote 1 of her brief.

marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997). Other of the *du Pont* factors may be relevant if evidence pertaining to them is of record.

We turn first to the second *du Pont* factor, which requires us to consider the similarity or dissimilarity of applicant's and registrant's respective services. A printout of an Internet website² made of record by the Trademark Examining Attorney includes, under the heading "Short Term Consumer Loans," the following text: "Are you short of money and could use payday loans of up to \$500 before your next paycheck? Apply in less than three minutes and you can have cash in your account overnight with our fast cash advances." Based on this evidence, we find that registrant's "cash advance services" and applicant's "check cashing" and "short-term consumer loans" are highly similar or legally identical.³ Applicant has presented no argument or evidence to the contrary. The

² www.ddrplaaace.com/payday-loans/short-term-commercial-loans

³ We also note, in passing, that applicant's specimen of use refers to applicant's services as "cash advance centers." [Emphasis added.]

second *du Pont* factor weighs in favor of a finding of likelihood of confusion.

In view of the highly similar or legally identical nature of the applicant's and registrant's respective services, we also find, under the third and fourth *du Pont* factors, that the respective services are marketed in the same prospective trade channels and to the same prospective classes of purchasers. Moreover, we find that the purchasers of these services are ordinary consumers who would not exercise a great deal of care in making their decision to purchase the services. Indeed, given the nature of these services, the relevant purchasers are likely to be impulse purchasers. The third and fourth *du Pont* factors thus weigh in favor of a finding of likelihood of confusion. Again, applicant has not contended otherwise.

Applicant's main argument in support of the registrability of his mark is that the marks are dissimilar, under the first *du Pont* factor. We make our determination under this factor in accordance with the following principles.

We must determine whether the marks are similar or dissimilar when compared in their entireties in terms of appearance, sound, connotation and commercial impression.

The test, under the first *du Pont* factor, is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression that confusion as to the source of the goods or services offered under the respective marks is likely to result. The focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, although the marks at issue must be considered in their entirety, it is well-settled that one feature of a mark may be more significant than another, and it is not improper to give more weight to this dominant feature in determining the commercial impression created by the mark. See *In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749 (Fed. Cir. 1985). Finally, in cases such as this, where the applicant's services are highly similar or legally identical to the registrant's services, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than it would be if the services were not identical. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698 (Fed. Cir. 1992).

In terms of appearance, we find that applicant's mark is similar to registrant's mark insofar as both marks begin with the word URGENT. It is not dispositive that applicant's mark is a compressed term comprising the two words URGENT and CASH; applicant's mark still must be deemed to begin with the word URGENT. The marks are dissimilar in terms of appearance to the extent that applicant's mark is a compressed term consisting of two words, URGENT and CASH, and registrant's mark has three separate words, URGENT MONEY SERVICE.

In terms of sound, the marks are similar to the extent that the pronunciation of both would start with the word URGENT. The words CASH in applicant's mark and the words MONEY SERVICE in registrant's mark do not sound similar.

In terms of connotation, we find the marks to be highly similar. Both marks start with the term URGENT, a term which has the same meaning as used in both marks. It connotes the sense of "urgency" facing the purchaser, who utilizes applicant's or registrant's services to obtain money for emergency needs. CASH and MONEY are similar in connotation as they are used in the respective marks; "cash" is a type or form of "money." SERVICE is a highly descriptive term as applied to the relevant services. The word appears (and is disclaimed) in registrant's mark, and

its presence contributes little or nothing to the connotation of the mark. Its absence from applicant's mark does not suffice to distinguish the marks in terms of connotation.

In terms of overall commercial impression, we find that the marks are similar. CASH and MONEY SERVICE are highly descriptive of, if not generic for, applicant's and registrant's services, respectively. Because this is so, we find that URGENT, although somewhat suggestive, is the dominant feature in both of the marks. Applicant has submitted third-party registrations which purport to show that URGENT is a commonly-used term. However, those registrations all use the term in connection with medical care services, i.e., "urgent care." Applicant also has submitted a printout from the GOOGLE search engine which lists numerous "hits" which include references to "Urgent Money Service." These "hits" are of marginal probative value in our determination of what the actual contents of the websites are. *See In re Fitch IBCA Inc.*, 64 USPQ2d 1058 (TTAB 2002). Moreover, the references to "Urgent Money Service" in the Google "hit" list could easily be references to registrant itself. Without the benefit of the actual website contents, we cannot discount this possibility.

On this record, we find that applicant and registrant are the only two users of the term URGENT in connection with the services at issue in this case. That term, when combined with the highly descriptive or generic terms CASH and MONEY SERVICE, dominates the commercial impression of each of the marks, and leads us to conclude that the marks, viewed as a whole, are similar in terms of overall commercial impression. As noted above, where the services are highly similar or identical, as they are in this case, the degree of similarity between the marks which is required to support a finding of likelihood of confusion is less than it would be if the services were more dissimilar.

For the reasons discussed above, we find that applicant's mark is similar to registrant's mark, under the first *du Pont* factor.

We shall briefly discuss other arguments made by applicant.⁴ Applicant asserts that registrant's mark is not famous. However, the Trademark Examining Attorney is not required to establish that registrant's mark is famous in order to support a finding of likelihood of confusion. If evidence of fame is of record (which often is the case only

⁴ We have considered all of the evidence and arguments presented by applicant, including those not specifically discussed in this opinion. They do not persuade us that our conclusion is incorrect.

in inter partes proceedings before the Board), then that evidence will be considered. However, the absence of evidence of fame does not weigh in applicant's favor.

Applicant also asserts that applicant has not encountered registrant's mark in the marketplace, that applicant is not aware of any actual confusion between the marks, and that the likelihood of confusion is de minimis because the applicant and registrant operate in different parts of the country. Even assuming that these assertions are correct, they are not dispositive, and they do not outweigh our findings on the other *du Pont* factors. Moreover, applicant's and registrant's current geographic separation is likely, as a factual matter, to be the reason why applicant has not encountered registrant, and why applicant is not aware of any instances of actual confusion. There appears to have been no significant opportunity for actual confusion to have occurred.

To summarize, we find that applicant's services are highly similar or legally identical to registrant's services, that the respective trade channels and classes of purchasers likewise are highly similar or legally identical, and that applicant's mark and registrant's mark, viewed in their entireties, are similar. These findings lead us to conclude that a likelihood of confusion exists.

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To the extent that any doubts might exist as to the correctness of this conclusion, we resolve such doubts against applicant. See *In re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025 (Fed. Cir. 1988); and *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Decision: The refusal to register is affirmed.